

1.6 Nonprofit CorporationsService Provider

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~~Nonprofit corporations (entities) that manage large soil absorption systems, extended treatment, experimental systems, or any other complex system, which the Director deems a maintenance entity is required to manage, must guarantee that they will be responsible for the system and be available to provide operation and maintenance. This section provides guidance for a nonprofit corporation to meet this requirement. If an O&M entity is set up to provide operation and maintenance for ETPSs (IDAPA 58.01.03.009.02 and 58.01.03.009.03) or large soil absorption systems (IDAPA 58.01.03.013.07.e) according to the following minimum elements, the maintenance entity will likely be approved by the Director. These minimum elements provide assurance that operation and maintenance, as conditioned for these particular systems by the Director, occurs. Other O&M entity elements may be acceptable on a case by case basis depending upon the maintenance needs of an entity. Elements not included within this guidance section will be evaluated on a case by case basis. A service provider is any person, corporation, or firm engaged in the business of providing operations maintenance, and monitoring (OMM) of specific (listed below) complex alternative systems in the State of Idaho (IDAPA 58.10.03.003.30).~~

Complex Alternative Systems requiring Service Providers for OMM:

- Extended Treatment Package Systems
- Recirculating Gravel Filters

1.6.1 Required Nonprofit Incorporation ElementsExtended Treatment Package System (ETPS) OMM

Beginning July 1, 2017, real property owners served by an ETPS are no longer required to be members of a non-profit operation and maintenance entity. To meet the operation, maintenance and monitoring requirements of their ETPS, real property owners shall retain the services of a service provider approved by DEQ (IDAPA 58.01.03.006.10.b).

Real property owners with member agreements and easements recorded with their county as a condition of subsurface sewage disposal permit issuance, may seek to remove those recorded documents at their own expense.

~~The following elements must be included within the nonprofit entity's articles of incorporation or bylaws:~~

- ~~1. The nonprofit organization should be incorporated according to Idaho Code §30-3.~~
- ~~2. The articles of incorporation shall include a requirement that any changes to the entity's articles of incorporation or bylaws shall be approved by DEQ's Water Quality Division Administrator (Director) or designee per Idaho Code §30-3-99.~~

~~The Director shall provide the nonprofit entity approval in writing of any changes to the articles of incorporation or bylaws that are not in conflict with section 1.6 or 1.9 of the TGM.~~

- ~~3. Membership should be limited to property owners only.~~
- ~~4. Voting should be limited to one parcel/one full membership/one vote.~~
- ~~5. Voting rights should be restricted to members with improved property.~~
- ~~6. Voting rights should not be cancelled.~~

~~Exception is allowed in the event that an ETPS is disconnected and removed from the property as approved by the Director.~~

- ~~7. Purposes of the organization should be clearly defined in the articles of incorporation.~~
- ~~8. The nonprofit entity should hold an annual meeting of the membership.~~
- ~~9. Funds generated are to operate specific functions and should be restricted for use to the specific purpose. Those purposes should be defined in the bylaws or associated membership agreement.~~
- ~~10. Annual financial reports should be made available to the membership upon request by individual members and through the annual membership meeting.~~
- ~~11. Multiple purpose organization funds generated are to be separately maintained, and funds from one account should not be available for another account's use.~~
- ~~12. The nonprofit entity may own the system(s) it intends to maintain and must have an access easement in place.~~

~~Access easements for ETPSs should be executed through a membership agreement as outlined in section 1.6.3.~~

- ~~13. Membership (and shares) in the nonprofit entity must run with the land, and successive owners must acquire the preceding owner's membership or voting share(s).~~
- ~~14. The nonprofit entity should provide the purchaser and any new member with a copy of the articles of incorporation, bylaws, covenants, and contracts (i.e., membership agreement) with the entity.~~
- ~~15. There should be no provisions restricting ownership of improved property.~~
- ~~16. The nonprofit entity should be capable of raising revenue by setting and collecting user charges.~~

~~17. Board of director requirements:~~

- ~~a. For ETPS nonprofit O&M entities, the board of directors should contain one permanent position required to be filled by a corporate officer, general partner, or owner of the manufacturer of the treatment technology.~~

~~The only exemption to this requirement shall be for cases where manufacturers are no longer in business. In this case, the existing board members and associated membership shall vote in a new board member to ensure that the minimum position requirement is fulfilled.~~

- ~~b. The board of directors should include a minimum of three board member positions.~~

- ~~18. The board of directors should be able to raise revenue for emergency operation and maintenance of community owned systems without majority vote.~~

- ~~19. The nonprofit entity must be capable of suing and of being sued, maintain the capability to impose liens on those members (shareholders) who become delinquent in user charges, and suspend services, providing such suspension will not jeopardize other members' use.~~
- ~~20. The nonprofit entity should provide an O&M manual that shall be approved by the Director.~~
- ~~21. The O&M manual should be provided to all new members for ETPSs and shall include the monitoring requirements as outlined in section 1.9.2.~~
- ~~22. Conditions for dissolution of the nonprofit entity should be specified. Dissolution should be limited to connection to a municipal wastewater treatment facility or merger with another approved nonprofit entity with management capability.~~
- ~~23. Except as provided in item 22 above, the nonprofit entity should not be able to vote itself out of existence.~~
- ~~24. For nonprofit entities, a third party (i.e., maintenance entity or service provider) should be identified to execute the specified operations and maintenance functions.~~
- ~~25. Service providers for nonprofit entities overseeing ETPSs should be certified in writing by the manufacturer for the servicing of their technology. The certification should be provided to the Director prior to approval.~~
- ~~26. The nonprofit entity should be able to plan and control how and at what time additional service functions will be extended or added.~~
- ~~27. The articles of incorporation and/or bylaws should provide for proxy voting.~~
- ~~28. Proxies should not be binding on new purchasers.~~
- ~~29. For community systems, the project developer should be required to contribute to the operation and maintenance until the nonprofit entity is self-sustaining. Consider either a specified period of time or when a specified number of lots have been sold.~~
- ~~30. The nonprofit entity should have a defined service area boundary.~~

1.6.1—Notification Requirements

The nonprofit entity shall notify the Director for any of the following reasons:

- ~~1. Content changes to the articles of incorporation, bylaws, or membership agreements that occur after initial approval by the Director shall be provided to the Director for review and approval prior to implementation. Changes that conflict with any portion of section 1.6.1 should not be approved.~~
- ~~2. Changes occur to the board of directors.~~
- ~~3. Service provider(s) are changed.~~
- ~~4. Sampling plan changes or adjustments are necessary.~~

1.6.2—Membership Agreements for Extended Treatment Package Systems

The membership agreement is separate from the articles of incorporation and bylaws for the nonprofit entity but is required for membership in the nonprofit entity and to ensure that proper operation and maintenance will be performed (IDAPA 58.01.03.009.03). Membership agreements should contain the following elements:

1. ~~The title of the membership agreement should include the words lien notice, access easement, member agreement, and the name of the nonprofit entity.~~
2. ~~The contact information for the nonprofit entity should be list a mailing address and phone number.~~
3. ~~A statement that annual fees will be assessed for services rendered by the nonprofit entity should be included.~~
4. ~~The agreement should describe the exact services that are and are not included within the agreement (e.g., service, maintenance, annual testing, repairs, and annual report submission).~~
5. ~~The access easement language should be included.~~
6. ~~A description of the lien process should be included.~~
7. ~~The legal description of the property should be included.~~
8. ~~A requirement that upon each sale of the property the buyer will sign an acknowledgement that they have reviewed the membership agreement and its requirements are understood.~~
9. ~~The agreement should state that the current property owner must disclose the terms of the membership agreement prior to any sales transaction of the property.~~

1.6.3 ~~Sampling Plans for Extended Treatment Package Systems~~

~~Nonprofit entities formed for the purpose of maintaining, servicing, and testing ETPSs shall develop a sampling plan for effluent testing (IDAPA 58.01.03.009.03). Sampling plans should contain the following elements:~~

1. ~~Signed letter from the manufacturer of the treatment technology certifying that the sampling method provided is acceptable for their technology.~~
2. ~~Sampling location and design that is located after the secondary treatment unit for both gravity and pressurized systems.~~
3. ~~Sample collection, preservation, and transportation techniques and methods that conform to the latest edition of *Standard Methods for the Examination of Water and Wastewater* (Rice et al. 2012).~~
4. ~~Method to collect all samples from a free-flowing effluent pipe. Hose or portable water sources may be used to induce flowing conditions but should be used as a last resort when access to a water source within the home is not available. If a hose or portable water source is used to induce a flowing condition, the water source should discharge into the cleanout between the structure and primary septic tank. Cross connection and backflow prevention should be considered if hoses are used to induce flow.~~
5. ~~Sample point cleaning and flushing procedures prior to sample collection.~~
6. ~~Any necessary sampling device calibration techniques, equipment, and reagents.~~
7. ~~Effluent field sample indicators that may be recommended for evaluation prior to grab sample collection. These indicators should provide indication that the treatment unit is operation properly.~~